

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	(RBW)
	:	
Defendant.	:	
_____	:	

FINAL PRETRIAL ORDER

The final Pretrial Conference in this matter was held _____
_____.

Accordingly, it is this _____ day of _____, 2002.

ORDERED, that the trial in this matter is scheduled for _____,
at 9:30 a.m., in courtroom 5 at the E. Barrett Prettyman United States Courthouse, 333
Constitution Avenue, N.W., Washington, D.C. 20001.

ORDERED, that the trial of this matter will be (by the court) (a jury of _____).

ORDERED, that the trial of this matter will be held on Monday through Thursday,
from 9:30 a.m. to 5:00 p.m., with a lunch break from approximately 1:00 p.m. to 2:15 p.m.,
unless otherwise indicated by the court.

ORDERED, that counsel and their clients are expected to be punctual for all
courtroom proceedings.

ORDERED, that based upon counsel's estimate that the trial of this matter will take
approximately _____ to complete, counsel and the parties shall clear their

calendars during that time so that they will be available to the court throughout the duration of the trial.

ORDERED, that the court adopts the parties' Joint Pretrial Statement as part of this Pretrial Order, except where challenged by a party or as modified below:

Plaintiff's current settlement demand is _____.

The settlement offer of defendant is currently _____

There is _____ possibility of settlement, and the parties are encouraged to continue settlement discussions up to the day of trial.¹

(1) Motions decided and rulings made at the pretrial conference:

(2) Further motions/legal issues to be briefed, along with the due dates for the submissions, are as follows:

¹The court is available to assist the parties in negotiations up to the day of trial. However, the court will not entertain settlement discussions on the morning of the trial.

(3) Except as noted below, there is no dispute as to the authenticity of exhibits and no party need produce proof of authenticity at trial.

(4) All exhibits shall be pre-marked by counsel (or pro se parties) prior to the first day of trial. An exhibit list that identifies each exhibit numerically shall be provided to the Courtroom Deputy Clerk on the first day of trial, and the court shall be provided with a copy of all exhibits that are organized in a loose leaf binder in numerical order.

(5) The trial exhibits of the parties:

_____ were retained by the court.

_____ were returned to the parties and must be brought back to the court and given to the Courtroom Deputy Clerk on the first day of trial.

(6) Except for rebuttal or impeachment purposes, no party may offer at trial the testimony of any witness not listed in the pretrial statement.

(7) Except for rebuttal or impeachment purposes, no party may offer at trial any exhibits that were not identified to all other counsel and made available for inspection and/or copying by all other counsel.

(8) Except for impeachment purposes, no answers to interrogatories and deposition testimony will be admissible at trial if not listed in the pretrial statement or this Final Pretrial Order.

(9) The court will advise the parties, prior to jury selection, of the voir dire questions that will be submitted to the venire. The court will conduct the voir dire.²

(10) The court will advise the parties, prior to final argument, of the court's determinations concerning instructions to be given to the jury.

It is further ORDERED that the following courtroom procedures will be followed:

(1) The court's jury selection procedure, which is attached hereto as addendum 1, is incorporated into this Order.

(2) Preliminary Instructions: After the jury is selected and sworn, the court will give preliminary instructions to the jury. These instructions will generally include a description of the trial process, the responsibilities of the participants, the burden of proof, the daily trial schedule, procedures governing juror note taking and the duty not to discuss the case with anyone until deliberations begin. If counsel desire that any additional preliminary instructions be given, they should make that request in the Joint Pretrial Statement.

(3) Note Taking by Jurors: Unless indicated otherwise by the court, jurors will

² A detailed description of the court's jury selection procedure is attached to this Order as an addendum.

be permitted to take notes in notebooks which the court will provide. The jurors will be given a preliminary instruction about note taking. During recesses, jurors will be required to leave their notebooks in the courtroom on their seats. At the end of each day, the notebooks will be collected by the clerk, and will be placed back on the jurors' seats at the commencement of the trial on the following day. At the end of the trial, the jurors will be permitted to take their notebooks to the jury room for use during deliberations. At the end of deliberations, any notes taken by jurors will be destroyed.

(4) Opening Statement: Except for especially complex cases, or otherwise authorized by the court, opening statements shall be limited to no more than thirty minutes per side. Counsel will be admonished by the court should their opening statements stray into forbidden argument, as opposed to a straightforward statement of what the evidence will show. Counsel is expected to object if improper statements are made by opposing counsel. Plaintiff's counsel shall make no reference to the ad damnum clause of the complaint, nor to any claim for punitive damages without prior approval of the court.

(5) The Rule on Witnesses: The rule on witnesses will be in effect throughout the trial until the time of closing arguments and instructions. Other than parties and their representatives, all witnesses must remain out of the courtroom except while testifying. If counsel desire a waiver of the rule with respect to a specific witness (for example, an expert), counsel shall first discuss the matter with opposing counsel and then present the request to the court prior to the witness' arrival in the courtroom. Counsel shall instruct witnesses not to discuss their testimony, in particular, with other witnesses, either during or after they complete their testimony.

(6) Availability of Witnesses: Once the trial begins, witnesses may be put on

call at the peril of the calling party. The trial will not be recessed because a witness is unavailable except in extraordinary circumstances. If alerted ahead of time, the court will endeavor to accommodate witnesses with scheduling problems. In some instances, it may be wise for counsel to arrange a de bene esse deposition of a witness whose schedule makes his or her live appearance at trial problematic. Any objections to de bene esse depositions should be designated in writing and delivered to chambers at least one week before trial so that the court can review objections before the trial commences. In the case of videotaped depositions, a transcript of the deposition must be submitted to the court in order for the court to rule on objections. In the absence of any objections, the transcript or videotape will be presented to the jury (or the court in a non-jury trial) without interruption.

(7) No retained expert may testify during a party's case-in-chief or in rebuttal unless his or her Rule 26(b)(4) statement has been provided to opposing counsel prior to the Pretrial Hearing.

(8) Examination of Witnesses: Counsel may approach the witness stand while handling exhibits; permission to do so must be requested from the court. Otherwise, counsel are required to remain at the podium, at counsel's table, or at a distance from the witness that is not intrusive or intimidating to the witness.³

Where counsel seeks to impeach a witness by use of that witness' prior deposition or other discovery materials, counsel shall first provide a copy of such document to the court so that the court can follow the course of the impeachment.

³ If counsel moves away from the podium while questioning a witness, counsel must use the hand microphone so that the proceedings can be taped and the court reporter can transcribe an accurate transcript.

After all counsel have completed their examinations of a witness, jurors will be permitted to submit questions to the witness pursuant to the following procedure:

(A) During the court's preliminary instructions, jurors will be told that they will be permitted to submit written questions to the court after counsel have completed their examination of a witness. The court's preliminary instructions will also include an admonition to the jury that if they decide to ask a question, that they should do so as a neutral judge of the facts and not as a partisan advocate for one side or the other. Moreover, the jurors will be told that the court may not be able to ask a witness a proposed question for legal reasons and that if that occurs, the jurors must act as if the question was never submitted to the court and they cannot speculate about what the answer would have been.

(B) When a written question is submitted by a juror, the question will be reviewed by the court with counsel, who will be given the opportunity to lodge any objections. The court will either sustain the objection and not submit the question to the witness or overrule the objection and submit the question to the witness through the court.

(9) Objections: "Speaking objections" in the presence of the jury will not be permitted. Counsel will limit objections to shorthand phrases such as "hearsay," "lack of foundation," "asked and answered," etc. If additional discussion is needed, counsel must request to approach the bench for further discussions. However, frequent or protracted bench conferences are discouraged.

(10) Exhibits: Except where objections have been reserved at the Pretrial Conference, exhibits which have been properly pre-marked and submitted are admitted. Counsel may refer to them in argument or during the examination of witnesses and need

not lay a foundation for their admissibility or move their admission during the trial. Impeachment exhibits (those whose sole purpose is to attack a witness's veracity) need not be disclosed at the pretrial conference, but they should be pre-marked, when possible, so that they will be immediately useable at trial without the necessity for labeling by the clerk. And, all exhibits must be shown to opposing counsel before a witness is confronted with them.

(11) Closing Arguments: Closing arguments will generally be limited to no more than one hour per side. Requests for longer presentations must be submitted to the court before closing arguments begin. Plaintiff may reserve for rebuttal up to one-half of the time actually used during the direct argument.

During closing arguments (and opening statements), it is expected that counsel will treat each other with courtesy and civility. When counsel believes that an opponent's closing argument clearly transgresses appropriate legal boundaries, counsel must interpose an objection, which will be heard at the bench, if the court deems a bench conference necessary. Additionally, the court may sua sponte interrupt counsel in order to preclude improper argument. In particular, counsel are reminded that it is improper to argue matters not in evidence or to express personal opinions or beliefs about the case.

(12) Final Jury Instructions: The court will tape record its instructions and the tape recording of the instructions along with a written copy of the instructions will be sent to the jury room with the jury when they commence their deliberations.

(13) Deliberations: The court will send to the jury at the beginning of deliberations all admitted exhibits, the written and tape recorded jury instructions, and any verdict form and special interrogatories that the court has decided to use. In addition,

jurors will be able to take their notebooks with them if note taking has been permitted.

Throughout jury deliberations counsel must be available on twenty minutes notice in order for the court to expeditiously respond to any jury notes or a verdict. Counsel who choose not to remain in the immediate vicinity of the courtroom must provide the clerk with a telephone number where they can be contacted.

Unless counsel object, the jury will not be brought into the courtroom to be excused at the end of the day, nor for resumption of deliberations when it returns the following day. Instead, the courtroom clerk will excuse the jury from the jury room at the end of the day and collect all exhibits, notebooks, and verdict forms. These items will be returned to the jury room when the jury returns the next morning to continue its deliberations.

It is further ORDERED that although counsel is permitted to question jurors about the case and the verdict after deliberations have been completed, they cannot do so in a manner that is intimidating, insulting or critical.

Reggie B. Walton
United States District Judge

Copies to:

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